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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

SEPARATE COMMENTS OF THE BROADBAND PCS ALLIANCE OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Broadband PCS Alliance ("BPA") of the Personal Communications Industry Association ("PCIA") respectfully submits these separate comments regarding the proposals set forth in the Recommended Decision adopted by the Federal-State Joint Board[1] in the above-captioned proceeding as well as the Commission's related public notice.[2] The BPA fully concurs in the PCIA comments being contemporaneously filed in this docket. The BPA files separately in order to address the appropriate policies for calculating the contributions to be made by individual carriers.

The BPA opposes the Joint Board's recommendation that charges should be assessed on

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[1] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision (Nov. 8, 1996) ("*Joint Board Recommendation*"); *Errata*, FCC 96J-3 (Nov. 19, 1996).

[2] *Common Carrier Bureau Seeks Comment on Universal Service Recommended Decision*, DA 96-1891 (Nov. 18, 1996). The date for filing comments was extended to December 19, 1996, by *Order*, CC Docket No. 96-45 (Dec. 11, 1996).

the basis of "a carrier's gross telecommunications revenues net of payments to other carriers."[3] Because such a cost recovery scheme will likely cause carriers deploying new networks, such as personal communications service ("PCS") providers, to contribute disproportionately to the fund, it should be rejected as impermissibly discriminatory, in contravention of Section 254(d)of the Communications Act of 1934, as amended.[4] Instead, the Commission should assess contributions on a per-line basis, thereby setting all telecommunications carriers on a level playing field.

Any contribution scheme based on gross revenues places unfair burdens on new carriers, who must recover their startup costs from their gross revenues. This situation is particularly acute for C block PCS licensees in that they recently paid record sums at auction to procure their licenses, and now must raise -- and eventually recover from their subscribers -- even more capital for network build-out. Thus, PCS operators must have greater revenues than other carriers simply to break even. By contrast, cellular and landline carriers have already substantially completed their networks and obtained their licenses for free. Therefore, such carriers need to recover less in revenues in order to turn a profit.

Basing the contribution scheme on gross interstate revenues also creates undue hardships for commercial mobile radio service ("CMRS") carriers, which cannot easily separate interstate from intrastate revenues. As noted in PCIA's comments, CMRS is an inherently interstate service for a number of reasons. First, since 1993, CMRS has been

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3 Joint Board Recommendation, ¶ 807.

4 47 U.S.C. § 254(d).

largely exempt from state entry and rate regulation under Section 332(c)(3).[5] Second, CMRS service areas -- including metropolitan statistical areas ("MSAs"), major trading areas ("MTAs"), and basic trading areas ("BTAs") -- often straddle state boundaries. Third, the radio transmitters, switches, and backhaul links that comprise CMRS networks are often located throughout multistate areas. Finally, wireless calls that begin as intrastate calls often become interstate calls, and vice-versa, as mobile callers cross and re-cross state lines.

Against this regulatory and factual background, CMRS providers have had little reason to implement accounting systems that separate intrastate from interstate revenues. In addition, it is unclear whether it is even technically feasible to separate such revenues. Even if the technology were available to break CMRS calls into inter- and intrastate components, its implementation might well be prohibitively expensive, thereby placing CMRS carriers at a competitive disadvantage.

Thus, instead of using a revenue-based means of assessing universal service contributions, the Commission should use a line-based means of assessing such contributions. Basing the contribution on the number of lines is competitively neutral in that it places new entrants that must build out their networks on an equal regulatory plane with established carriers. Finally, a line-based scheme will not force CMRS carriers to expend the resources necessary to separate their inter- and intrastate revenues. Such an expenditure of resources seems particularly futile, given that it will be solely for the purpose of satisfying a regulatory requirement.

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[5] 47 U.S.C. § 332(c)(3).

It is also not clear what precise services would be included within the gross telecommunications revenues category. Similarly, it is not certain under the *Joint Board Recommendation* how carriers would allocate revenues received for a service package that includes both telecommunications revenues that form the basis for calculating universal service fund contributions and non-telecommunications revenues. For example, many PCS providers include voice mail, call waiting, or caller ID as part of their service offerings without a separate charge. There is no readily apparent way in which PCS licensees could allocate their revenues between covered services and those not included in the revenue base. These uncertainties highlight the practical problems with using the formula proposed by the Joint Board.[6] Indeed, the Joint Board's proposal could afford carriers with the opportunity to manipulate their revenue allocations in order to reduce their universal service fund contributions in a manner that would not be easy for the Commission to detect.

Assessing contributions on a per-line basis can be readily accommodated and would be more equitable. The BPA understands that there are established industry practices for converting high volume transmission facilities to a number more comparable to a single line. Such conversion rates could be published, with the responsibility for calculating the final relevant number placed on individual service providers in annual reports to be filed with the Commission in connection with the submission of universal service contribution payments.

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[6] Similar problems with the formulas used in calculating telecommunications relay service contributions and regulatory fee payments may not have been highlighted by affected parties simply because the required payments did not warrant undertaking regulatory proceedings to resolve the questions. With respect to universal service, however, the expected contribution levels to justify consideration of the numerous problems that can be ignored in the other contexts.

In the event the Commission endorses the Joint Board proposal for calculating universal service fund payments, contributions to the federal fund should be based only on interstate revenues and not intrastate revenues. Since Section 2554 explicitly contemplates that there may be both a federal and state fund in any given state, and to the extent the Commission rejects PCIA's view that all CMRS traffic and revenues should be deemed interstate, then CMRS as well as other service providers are likely to confront requirements to pay into two funds (federal and state) in many states.[7] Requiring federal funding based on interstate revenues would minimize double payments based on double counting of the same revenues, would appear to be most equitable to all telecommunications carriers, and would be consistent with traditional jurisdictional lines.

In addition, the Joint Board proposal contemplates that amounts paid to other telecommunications carriers would be deducted from the gross telecommunications revenues used as the base for calculating contribution amounts. The Joint Board concluded that this formula would eliminate a double payment problem, would more closely approximate a value-added contribution, and would be administratively easy to implement.[8] Consistent with those goals, the Commission should clarify that the formula excludes amounts associated with fraudulent usage of communications facilities, discounts, promotional offerings, and bad debt.

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[7] The BPA points out that a Connecticut court has recently ruled that Section 332 preempts the state from collecting universal service fund assessments from CMRS licensees except where the CMRS service is a substitute for land line service. *Metro Mobile of Fairfield County, Inc. et al. v. Connecticut Department of Public Utility Control*, No. CV-95-00512758, slip op. at 7-8 (Connecticut Superior Court, Judicial District of Hartford-New Britain Dec. 5, 1996).

[8] *Joint Board Recommendation*, § 807.

Excluding amounts associated with the above items will help to provide the most accurate picture of the gross telecommunications revenues net of payments to other carriers for each entity subject to universal service funding obligations.

The gross telecommunications revenues net of payments to other carriers formula advocated by the Joint Board must be rejected. It is inequitable and difficult to administer. The Commission instead should adopt a formula based on number of lines. Should the Commission nonetheless adopt the Joint Board's proposed formula, the federal fund should be based only on interstate revenues, and amounts related to fraud, bad debt, discounts, and promotional offerings must be excluded.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of December, 1996, I caused copies of the foregoing Separate Comments of the Broadband PCS Alliance of the Personal Communications Industry Association to be mailed via first-class postage prepaid mail to the individuals and parties on the following list.

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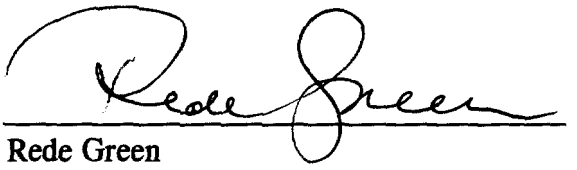

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